

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 4282

DONOVAN GONZALEZ

8481 Holder Street
Buena Park, CA 90620

Pharmacy Technician Registration
No. TCH 109943

Respondent.

ORDER DENYING REQUEST TO VACATE DEFAULT DECISION

The Board of Pharmacy having read and considered respondent's request to vacate the Board's Default Decision effective October 15, 2012, NOW THEREFORE IT IS ORDERED that the request is denied. The Board of Pharmacy's Decision and Order effective October 15, 2012 remains in effect.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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6 **BOARD OF PHARMACY**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 4282

10 **DONOVAN KYLE GONZALEZ**
11 **8481 Holder Street**
12 **Buena Park, CA 90620**

DEFAULT DECISION AND ORDER

13 **Pharmacy Technician Registration No. 109943**

[Gov. Code, §11520]

14 Respondent.

15 **FINDINGS OF FACT**

16 1. On or about June 1, 2012, Complainant Virginia Herold, in her official capacity as
17 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
18 Accusation No. 4282 against Donovan Kyle Gonzalez (Respondent) before the Board of
19 Pharmacy. (Accusation attached as Exhibit A.)

20 2. On or about January 20, 2011, the Board of Pharmacy (Board) issued Pharmacy
21 Technician Registration No. 109943 to Respondent. The Pharmacy Technician Registration was
22 in full force and effect at all times relevant to the charges brought in Accusation No. 4282 and
23 will expire on October 31, 2012, unless renewed.

24 3. On or about June 12, 2012, Respondent was served by Certified Mail and by First
25 Class Mail copies of Accusation No. 4282, Statement to Respondent, Notice of Defense, Request
26 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
27 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
28 section 4100 and California Code of Regulations title 16, section 1704, is required to be reported

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1 and maintained with the Board. Respondent's address of record was and is 8481 Holder Street,
2 Buena Park, CA 90620.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

5 5. On or about July 2, 2012, the aforementioned documents were received by
6 Respondent, which was acknowledged through his signature on the receipt for certified mail with
7 reference number 7196 9008 9111 3006 2885.

8 6. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the
10 respondent files a notice of defense, and the notice shall be deemed a specific
11 denial of all parts of the accusation not expressly admitted. Failure to file a notice
12 of defense shall constitute a waiver of respondent's right to a hearing, but the
13 agency in its discretion may nevertheless grant a hearing.

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon
15 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
16 No. 4282.

17 8. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at
19 the hearing, the agency may take action based upon the respondent's express
20 admissions or upon other evidence and affidavits may be used as evidence without
21 any notice to respondent.

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 4282, finds that
27 the charges and allegations in Accusation No. 4282, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10 Taking official notice of its own internal records, pursuant to Business and Profession
11 Code section 125.3, it is hereby determined that the reasonable costs for Investigation and
12 Enforcement is \$1,275.00 as of August 13, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Donovan Kyle Gonzalez has subjected his Pharmacy Technician Registration No. 109943 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Respondent has subjected his license to discipline under Code sections 490 and 4301, subdivision (l) in that on or about September 30, 2011, in a criminal proceeding entitled *The People of the State of California vs. Donovan Kyle Gonzalez*, in Orange County Superior Court, Case Number 11NM15946, Respondent was convicted on his plea of guilty to violating Penal Code (PC) sections 484 subdivision (a)/488, petty theft, and PC section 148.5 subdivision (a), falsely reporting a crime, both misdemeanors that are substantially related to the qualifications, functions, and duties of a licensed pharmacy technician.

b. Respondent has subjected his license to discipline under Code section 4301, subdivision (f), in that on or about July 7, 2011, he conspired to defraud his employer of the day's receipts by setting up a robbery for his personal gain, and falsely reported a robbery to the police, which constitute acts involving moral turpitude, dishonesty, fraud, deceit, and corruption.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. 109943, heretofore issued to Respondent Donovan Kyle Gonzalez, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 15, 2012.

It is so ORDERED ON September 14, 2012

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

STANLEY C. WEISSER
Board President

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DOJ Matter ID:SD2012703058

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorney General of California
2 ALFREDO TERRAZAS
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3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4282

13 **DONOVAN KYLE GONZALES**

14 **8481 Holder Street**

Buena Park, CA 90620

Pharmacy Technician Registration No. 109943

Respondent.

A C C U S A T I O N

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about January 20, 2011, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number 109943 to Donovan Kyle Gonzales (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on October 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

5. Section 4300, subdivision (a), of the Code provides that every license issued may be suspended or revoked.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

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1 (3) The time that has elapsed since commission of the act(s) or
2 offense(s).

3 (4) Whether the licensee has complied with all terms of parole,
4 probation, restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

6 11. California Code of Regulations, title 16, section 1770, states:

7 For the purpose of denial, suspension, or revocation of a personal or
8 facility license pursuant to Division 1.5 (commencing with Section 475) of the
9 Business and Professions Code, a crime or act shall be considered substantially
10 related to the qualifications, functions or duties of a licensee or registrant if to a
11 substantial degree it evidences present or potential unfitness of a licensee or
12 registrant to perform the functions authorized by his license or registration in a
13 manner consistent with the public health, safety, or welfare.

14 **COST RECOVERY**

15 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
16 administrative law judge to direct a licensee found to have committed a violation or violations
17 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(September 30, 2011 Criminal Convictions for Petty Theft and**

21 **Falsely Reporting A Crime on July 7, 2011)**

22 13. Respondent has subjected his license to discipline under Code sections 490 and
23 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the
24 qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as
25 follows:

26 a. On or about September 30, 2011, in a criminal proceeding entitled *The*
27 *People of the State of California vs. Donovan Kyle Gonzales*, in Orange County Superior Court,
28 Case Number 11NM15946, Respondent was convicted on his plea of guilty to violating Penal
Code (PC) sections 484 subdivision (a)/488, petty theft, and PC section 148.5 subdivision (a),
falsely reporting a crime, both misdemeanors. Charges for violation of PC sections 487,

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1 subdivision (a), grand theft of property with a value over \$950.00, and 508, embezzlement, were
2 dismissed pursuant to a plea bargain.

3 b. As a result of the convictions, on or about September 30, 2011,
4 Respondent was sentenced to three years informal probation and ordered to serve 20 days in the
5 Orange County Jail or perform 20 days of service with the California Department of
6 Transportation, in lieu of jail. Respondent was also ordered to pay \$200.00 in fines, \$140.00 in
7 fees, and restitution.

8 c. The facts that led to the conviction are that on or about the weekend before
9 July 7, 2011, Respondent and a co-conspirator planned a robbery during Respondent's nightly
10 money drop off in his job for Papa John's Pizza at a bank in Buena Park, California. On or about
11 July 7, 2011, with a bank bag containing approximately \$697.00, Respondent drove to the bank,
12 approached and unlocked the night deposit box, looked around, and returned to his parked
13 vehicle. When the co-conspirator arrived, Respondent got out of the car with the bank bag and
14 approached the night deposit box. The co-conspirator ran up to Respondent, pushed him away
15 from the night drop, grabbed the bank bag, and ran away. Respondent then called 911 to report a
16 robbery and to request assistance. Respondent admitted to setting up the ruse after an
17 investigator told him that the entire sequence of the alleged robbery was recorded through the
18 bank's surveillance cameras.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,
21 Fraud, Deceit, or Corruption)**

22 14. Respondent has subjected his license to discipline under Code section 4301,
23 subdivision (f), in that on or about July 7, 2011, he conspired to defraud his employer of the
24 day's receipts by setting up a robbery for his personal gain, and falsely reported a robbery to the
25 police, which constitute acts involving moral turpitude, dishonesty, fraud, deceit, and corruption,
26 as detailed in paragraph 13, above.

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PRAYER

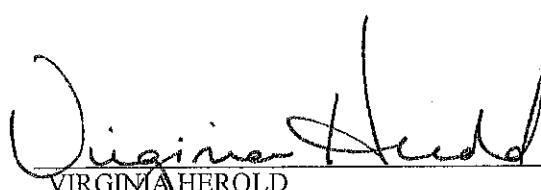
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number 109943, issued to Donovan Kyle Gonzales;

2. Ordering Donovan Kyle Gonzales to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/1/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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